

Protest of) Date: November 14, 1991
THE ROLM COMPANY)
Purchase Order No. 072358-91-P-0597) P.S. Protest No. 91-68

DECISION

The ROLM Company (ROLM) protests the award of purchase order no. 072358-91-P-0597 for a telephone system for the Cheyenne, WY Management Sectional Center (MSC) to Telecon Equipment Corp. (Telecon).

The Procurement and Materiel Management Branch, Denver Division received a requirement for a telephone system for the Cheyenne, WY MSC. The telephone system was to be based on an AT&T System 75 and offered the existing system as a trade-in. As the estimated amount of this purchase was below \$50,000, simplified purchasing procedures were used. Three vendors known to have equipment meeting the specifications were asked for oral quotes, and a purchase order was issued to Telecon on September 3, 1991. ROLM states that it first became aware of the award on September 9, when it was informed that the maintenance agreement on its system would be cancelled as of September 30, and that an award for an AT&T system to replace the ROLM system had been made. ROLM's protest, dated September 13, was received by our office on that day.

ROLM's protest alleges that the award to Telecon was improper under the Procurement Manual (PM) because adequate competition was not obtained and there was no justification for the restriction of the procurement to an AT&T system.^{1/} ROLM further alleges that any attempted justification for the restrictive nature of the procurement would not be able to meet the required PM exceptions which permit noncompetitive procurements. Given that it was ready and willing to compete based on a ROLM system, ROLM concludes that the procurement was unduly restrictive of competition, and argues that the award should be canceled and a new competitive procurement be conducted.

The contracting officer replies that, because the procurement was a simplified purchase conducted pursuant to the requirements of PM 4.2, the PM sections cited by ROLM are irrelevant and inapplicable. He notes that the procurement was able to proceed on a competitive basis because an adequate number of sources for the AT&T system was identified. Competition was adequate under the simplified purchasing requirements, the price was fair and reasonable and the successful offeror was responsible. Therefore, the contracting officer believes the protest to be without merit.

^{1/} Specifically, ROLM cites PM 4.1.1, which requires purchases to be made on the basis of adequate competition whenever feasible, and PM 4.3.2, which lists the justifications under which noncompetitive purchasing may be appropriate.

ROLM retorts that, even if the contracting officer did act pursuant to the simplified purchasing procurement procedures, his restriction of the requirement to an AT&T system was completely unjustified. While competition between AT&T and its suppliers was achieved, this competition was inadequate because it necessarily excluded any potential source who could not offer an AT&T system. ROLM also asserts that the hasty replacement of its system with the AT&T system implicitly admits that the procurement procedures used were questionable, and notes that a short delay in changing the systems while this protest was pending would not have done any serious harm to the Postal Service.

In response to a request from our office for additional information pursuant to PM 4.5.7 i., the contracting officer has explained the rationale for requiring an AT&T system. He states that, because of the replacement of equipment elsewhere in the division, a surplus inventory of over \$16,000.00 of AT&T equipment existed. This equipment was unique to AT&T's system and was incompatible with other telephone systems. Therefore, the decision to procure an AT&T system was based on the need to utilize this existing inventory of AT&T equipment and to avoid duplicative purchase of similar parts from another, non-AT&T vendor.^{1/}

ROLM raises three issues in its protest. The first issue revolves around its claim that adequate competition was neither sought or obtained on this procurement. ROLM's position is incorrect. Since the procurement was less than \$50,000, use of simplified purchasing procedures was permitted. PM 4.2.1 b.1. Competition for simplified purchases is governed by the provisions of PM 4.2.1 d.1., which requires that "[c]ompetition must be sought to the extent practicable. Proposals or quotations

must be solicited from a sufficient number of qualified sources to ensure that the price is fair and reasonable." The PM also states that "[f]or purchases over \$2,000, at least three sources should ordinarily be solicited." PM 4.2.1 d.3. These requirements were met here, since three sources capable of providing the required AT&T system were solicited. Therefore, competition on this requirement was adequate and in accordance with the applicable PM regulations.

Second, ROLM argues that the restriction of competition to an AT&T system was unjustified.^{2/} Our standard for review of a challenge to the terms of a solicitation is well-settled.

^{2/} Rolm received a copy of this additional information, but has not commented on the contracting officer's analysis of the restriction.

^{3/} Normally, such an allegation of a restrictive specification made after contract award would be untimely, pursuant to PM 4.5.4 b., which requires protests "based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals must be received by the date and time set for the receipt of proposals." However, this solicitation was oral, pursuant to PM 4.2.2 b.2, and, therefore, there were no alleged deficiencies apparent to ROLM prior to the date quotes were received. Since PM 4.5.4 b. does not apply to the specific situation of oral solicitations, ROLM's protest is timely under the provisions of PM 4.5.4 d., as it was filed within 10 working days of when the information on which the protest was based was known or should have been known and within 15 working days of the date of contract award.

The determination of the government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. Generally, when a specification has been challenged as unduly restrictive of competition, it is incumbent upon the procuring agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. But once the agency establishes this support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable.

Portion-Pac Chemical Corp., P.S. Protest No. 84-49, August 1, 1984. The contracting officer has explained that the restriction of the procurement to an AT&T system arose from the existence of over \$16,000.00 of surplus AT&T equipment which could be used if an AT&T system was purchased, but which would have to be purchased if another system was selected. Saving this sum, which was well over half of the purchase price of the system,

establishes the contracting officer's prima facie case for restricting the procurement to an AT&T system. ROLM has presented no substantive evidence that this restriction was clearly unreasonable. Therefore, the specification is not unduly restrictive.

Finally, ROLM argues that the hasty replacement of its system with the AT&T system was unnecessary and could have been delayed pending the resolution of the protest. When a protest is received after contract award, PM 4.5.5 b. requires the contracting officer to determine "whether it would be in the interest of the Postal Service to allow the contractor to proceed, seek a mutual agreement with the contractor to suspend performance on a no-cost basis, issue a unilateral stop-work order, or take other appropriate action." The contracting officer here decided to allow the contracting officer to proceed with installation of the AT&T system. Such decisions are only overturned if they are arbitrary, capricious, or unsupported by substantial evidence. See American Airlines Inc., P.S. Protest No. 84-72, December 14, 1984. ROLM has not met its burden of proving the contracting officer's actions to be flawed under this standard, and its allegation must fail.

The protest is denied.

[Signed]

D. D. Anna
Assistant General Counsel
Procurement Division
Office of Contracts and Property Law

[Compared to original 5/15/95 WJJ]